

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,
ex rel. DR. JOHN A. MILLIN,

Plaintiff/Relator,

4:16-CV-04103-LLP

V.

DEFENDANTS' MOTION TO DISMISS COMPLAINT WITH PREJUDICE

LARRY F. KRAUSE, an individual, and
KRAUSE-ALLBEE TRUCKING, INC., a
South Dakota corporation,

ORAL ARGUMENT REQUESTED

Defendants.

Pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6), and in support of their Motion to Dismiss the Complaint with Prejudice, Defendants Larry F. Krause and Krause-Allbee Trucking, Inc. (collectively, "Defendants") state as follows:

1. On July 18, 2016, John A. Millin ("Relator") filed under seal a *qui tam* complaint against Defendants on behalf of the United States of America. Dkt. No. 1.

2. In general terms, Relator—Defendant Larry Krause’s former son-in-law—alleges that Defendants made false claims for payment to the United States Department of Agriculture’s Farm Services Agency ("FSA"). Specifically, Relator alleges that Defendants presented false claims for payment (Count I) using false records (Count II), and that Defendants conspired to defraud the government by pursuing such claims (Count III). Similarly, Relator alleges the use of false records to conceal an obligation to pay money to the United States (Count IV). Finally, Relator seeks a declaratory judgment regarding an ownership interest in Krause-Allbee Trucking (Count V) and an award of "unjust enrichment" based on alleged payments received (Count VI).

3. On behalf of the United States, the Department of Justice investigated the Relator's allegations of false claims, declined to join Relator's lawsuit, and moved to unseal the complaint. Dkt. No. 13.

4. Counts I, II, III, and IV of the Complaint should be dismissed with prejudice because they fail to plausibly plead a False Claims Act ("FCA") claim with the requisite particularity. More specifically, Relator's threadbare declarations based "upon information and belief" are wholly insufficient to satisfy Rule 8(a), much less Rule 9(b)'s heightened pleading standard demanded by FCA claims.

5. Relator's conspiracy claim in Count III independently fails as a matter of law under the intracorporate-conspiracy doctrine, which dictates that a corporation cannot conspire with its agents. Furthermore, Count III fails without a sufficient FCA substantive claim. The conspiracy claim fails to plead even basic facts needed to establish such a claim, let alone the requisite specific intent to commit an FCA violation.

6. Finally, Relator's claims for declaratory judgment (Count V) and unjust enrichment (Count VI) are completely contrary to his allegations of fraudulent behavior, do not belong in Federal court in the event of the FCA claims' dismissal, and are implausible given the facts alleged.

7. For these reasons and for the reasons set forth in Defendants' Memorandum in Support of Defendants' Motion to Dismiss with Prejudice filed and served concurrently herewith and incorporated herein by this reference, the Court should dismiss the Complaint with prejudice.

WHEREFORE pursuant to Local Rule 7.1, Defendants respectfully request oral argument on their motion and request that this Court enter an order granting their Motion to

Dismiss with Prejudice, assessing all costs against Relator, and providing such other and further relief as this Court deems just and proper.

Date: July 14, 2017

BANTZ, GOSCH & CREMER, L.L.C.

/s/ James M. Cremer

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